

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
CASE NO

ANGELA SAMUELS, ROSSANA)
TORRES, DANIELLE STELLUTO,)
NATIONAL LOW INCOME HOUSING)
COALITION, a nonprofit corporation, and)
RIGHT TO THE CITY ALLIANCE, a)
nonprofit corporation)
)
Plaintiffs,)
)
vs.)
)
FEDERAL HOUSING FINANCE)
AGENCY; EDWARD DeMARCO, in his)
capacity as Acting Director of FEDERAL)
HOUSING FINANCE AGENCY)
)
Defendants.)
_____)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, Angela Samuels, Rossana Torres, Danielle Stelluto, all extremely low income tenants in desperate need of affordable housing, and the National Low Income Housing Coalition and the Right to the City Alliance, both non-profit membership corporations composed of individuals and organizations, sue Defendants Federal Housing Finance Agency and Edward DeMarco (hereafter “Federal Defendants”) and allege:

I. INTRODUCTION

1. Plaintiffs Angela Samuels, Rossana Torres, Danielle Stelluto are members of extremely low income households¹ who desperately need affordable housing and who have been harmed by

¹ “Extremely low income” is generally defined as: “(i) In the case of owner-occupied units, income not in excess of 30 percent of area median income; and (ii) In the case of rental units,

Defendants' failure to provide funding for housing affordable to extremely low income households. Plaintiffs National Low Income Housing Coalition and Right to the City Alliance, are non-profit membership corporations composed of individuals, many of whom are extremely low income individuals in need of affordable housing, and other local or statewide organizations, dedicated to expanding the supply of housing affordable to extremely low income families. Their members are likewise harmed by Defendants' failure to provide funding for housing affordable to extremely low income households.

2. Plaintiffs challenge the decision of the Federal Defendants to suspend the payments required by 12 U.S.C. § 4567 from the "unpaid principal balance of the total new business purchases" of the Federal National Mortgage Association (hereafter "Fannie Mae") and the Federal Home Loan Mortgage Corporation (hereafter "Freddie Mac") (collectively "the Enterprises"), which payments are statutorily set aside to fund the Housing Trust Fund. These funds, when paid into the national Housing Trust Fund, are explicitly directed to provide a secure source of funding for the construction and preservation of affordable housing for extremely low income households throughout the country.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction over the claims presented in this action pursuant to 28 U.S.C. § 1331 because this action arises under the Constitution and laws of the United States, specifically the Administrative Procedure Act, 5 U.S.C. § 702, *et seq.* Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202.

income not in excess of 30 percent of area median income, with adjustments for smaller and larger families." 12 CFR § 1282.1. *See also*, 24 CFR § 5.603.

4. Venue in the Southern District of Florida is proper pursuant to Title 28 U.S.C. § 1391(e) in that Plaintiffs Angela Samuels and Rossana Torres, as well as members of the organizational Plaintiffs, reside in the Southern District of Florida.

5. Plaintiffs' claims for relief against the Federal Defendants are authorized under 5 U.S.C. §701, *et seq.*, the Administrative Procedure Act.

6. Plaintiffs seek preliminary and permanent injunctive relief pursuant to Rule 65, Federal Rules of Civil Procedure.

III. PARTIES

A. PLAINTIFFS

7. All of the individual plaintiffs are members of extremely low income households and are in desperate need of affordable housing. Despite their best efforts, they have been unable to find housing due to the critical shortage of units that are affordable to households with extremely low income. If the funds mandated by 12 U.S.C. § 4567(a) were paid into the Housing Trust Fund it would each year significantly increase the number of units of housing affordable to extremely low income households in the cities where they live such that there would be a significant and immediate increased likelihood of housing for these individual plaintiffs as well as the extremely low income members of the RTTC, the NLIHC and the members of their constituent organizations.

8. Plaintiff Angela Samuels is an African American woman residing in Miami, Florida. She is currently temporarily living in her sister's apartment while she tries to obtain permanent housing. She has an extremely low income, earning approximately \$10,000 last year and less this year. Currently, a single person household in Miami-Dade County is considered an extremely low income household if the household income is less than \$13,750 per year. Ms.

Samuels is also a member of the Right to the City Alliance organization, the Miami Workers Center.

9. On or about May 2012, Ms. Samuels was evicted from her home as a result of a disputed foreclosure action and she has been unable to secure any permanent affordable housing since then. At the time of her eviction plaintiff Samuels was living in a home that had been owned by her father, who died in 2005. Ms. Samuels was then deceived into transferring the property to a person she thought was assisting her, who instead mortgaged the property, pocketed the funds and transferred the highly mortgaged property back to Ms. Samuels. Ms. Samuels home was burdened with a mortgage securing a loan of more than \$136,000, none of which had been paid to her.

10. Ms. Samuels was unable to afford the high payments on the mortgage and the home was foreclosed on and sold by the lender for approximately \$27,000. In May 2012 Ms. Samuels was evicted from that home and has been struggling to find permanent housing ever since. As a result of her homelessness, Ms. Samuels was forced to send to family in Georgia her niece and nephew whom she had been raising and caring for.

11. Ms. Samuels was unable to obtain, or even apply for, a Section 8 voucher housing subsidy or Miami-Dade County public housing because the waiting list for both programs in Miami-Dade County has been closed since 2008 and there are over 20,000 households on the waiting list. The few other projects affordable to extremely low income households in Miami also have prohibitive waiting lists or draw from the same Miami-Dade public housing waiting lists. Ms. Samuels has tried to obtain affordable housing at other existing "affordable housing" developments in Miami but their rents, even though described as affordable, are much more than she could possibly afford.

12. Plaintiff Rossana Torres is a sixty year old Hispanic woman residing with her son in Miami, Florida. Last year she and her son earned a total of approximately \$14,000. Currently, a two person household in Miami-Dade County is considered an extremely low income household if their yearly income is less than \$15,700 per year. Ms. Torres is also a member of the Right to the City Alliance organization, the Miami Workers Center.

13. Ms. Torres is a survivor of abusive domestic relationships, who has had to file several domestic violence petitions against her ex-husband and the father of her children. Since being laid off from Abercrombie and Fitch as part of a downsizing in 2005, she has worked numerous low paying jobs. She has been employed in phone marketing, canvassing, cleaning houses, repairing, painting and detailing cars, as well as fast food and retail. All of these positions were low paying and she was unable to afford decent housing. As a result, she has on at least two occasions been evicted from private rental housing due to her inability to pay the rent.

14. Since November 2012 she has lived in temporary housing arrangements with friends and family members. She has tried to obtain affordable housing but all the housing she finds is too expensive. She applied in the past for Miami-Dade public and assisted housing but her name was purged when a new waiting list was formed in 2008. Miami-Dade Public Housing Authority has not opened its waiting list since 2008 and it currently has over 20,000 households on the waiting list.

15. Miami-Dade County has a low rental vacancy rate and high rents. The most recent estimates from the U.S. Department of Housing and Urban Development (U.S. HUD) have identified Miami-Dade County as a "low vacancy" area. The U.S. HUD has determined that the Fair Market Rent for 1 and 2 bedroom apartments in Miami-Dade are \$876 per month and \$1,122 per month respectively. Thus, Plaintiff Samuels would have to pay 105% of her total

monthly income and Plaintiff Torres would have to pay 98% of her total monthly income just to afford housing payments at U.S. HUD's Fair Market Rents.

16. Plaintiff Danielle Stelluto is a single mother residing in Bronx, NY. She has been living in a shelter run by the New York Department of Homeless Services since March 16, 2012. She resides with her five year-old son and three year-old daughter. Since the city terminated the City-run Child Advantage housing voucher subsidy program in fall of 2011, Ms. Stelluto has been unable to find affordable housing in New York and was ultimately evicted from her Child Advantage voucher-subsidized apartment on March 16, 2012. Ms. Stelluto is a member of the Right to the City Alliance organization called Picture the Homeless.

17. Ms. Stelluto has an extremely low income. She works part-time as a home health aide and earns less than \$10,000 a year or \$192 a week. Ms. Stelluto has been trying to find stable housing since 2010, when she first entered the shelter system.

18. Initially she received city-sponsored housing voucher assistance as part of the Child Advantage housing voucher program. However, her voucher was terminated when the program was eliminated earlier than anticipated.

19. She obtained another housing voucher from a program called Family Eviction Prevention Supplement, or FEPS, which was meant to cover tenants facing eviction. However, she had to find a landlord willing to rent to her for the value of the voucher within 6 months, and despite her best efforts she was unable to do so. When she had finally found a landlord who would accept the voucher, her application was turned down because her family of four, which included her two children and their father, constituted too many occupants for the one bedroom apartment. Thus the assistance expired before she could find another willing landlord.

20. She was then forced to utilize the homeless shelter services. As a result of her inability to obtain decent affordable housing, Ms. Stelluto has been living in the homeless shelter since March 16, 2012. She has a substandard studio room which she shares with her two children.

21. Ms. Stelluto has been actively seeking affordable housing in New York. The Section 8 waiting lists are closed. She applied for New York City Housing Authority public housing and is on a waiting list. In addition, her mother is currently a tenant in a building in foreclosure, and Ms. Stelluto anticipates that her mother might have to resort to the shelter system also once her current home is lost.

22. The Plaintiff Right to the City Alliance (RTTC) is a New York State nonprofit corporation and a national membership organization composed of local and statewide membership organizations all of which have significant numbers of extremely low income members. RTTC, its constituent organizations and their members all advocate extensively for additional affordable housing for their extremely low income members, the extremely low income households in their communities and for all extremely low income households.

23. Many of these individual members of the RTTC constituent organizations are in desperate need of affordable housing and they are harmed by Defendants' failure to provide funding for housing affordable to extremely low income households. They would directly and significantly benefit from an increase in the number of affordable housing units affordable and available to extremely low income households in their communities.

24. RTTC as well as its member organizations have spent significant resources in attempting to secure additional resources for extremely low income housing. They have specifically had to divert resources from other efforts in order to try to enforce the statutory requirement of Fannie

Mae and Freddie Mac to contribute to the Housing Trust Fund. Despite those efforts they have been unable to halt, modify or reverse the illegal conduct of the Federal Defendants.

25. Plaintiff National Low Income Housing Coalition (NLIHC) is a District of Columbia nonprofit corporation and a national membership organization composed of local and statewide organizations, as well as individual members, many of whom are extremely low income. NLIHC, its constituent organizations and members have devoted themselves unceasingly since 2000 to advocate for the establishment and funding of a national Housing Trust Fund, supported by a dedicated funding source.

26. The members of the NLIHC consist of a significant number of extremely low income households throughout the country. Many of these individuals are in desperate need of affordable housing and they are harmed by Defendants' failure to provide funding for housing affordable to extremely low income households. They would directly and significantly benefit from an increase in the number of affordable housing units available to extremely low income households in their communities.

27. Due to the actions of the Federal Defendants in suspending payments to the Housing Trust Fund, the plaintiffs RTTC and NLIHC have had to divert substantial funds and resources away from actual implementation of the Housing Trust Fund and had to specifically redirect those resources to advocacy for basic funding for the Housing Trust Fund.

28. 28 U.S.C. §1338 requires the Secretary of Housing and Urban Development to establish, by regulation, a formula to distribute amounts made available under this subsection to each State to provide affordable housing to extremely low- and very low-income households. The statute further provides criteria for that allocation. Pursuant to the command of 28 U.S.C. §1338, the Secretary of Housing and Urban Development has proposed regulations for the administration of

the Housing Trust Fund and the distribution of its funding. 75 Fed. Reg. 66978-01, 2010 WL 4255283.

29. Those proposed regulations provide a detailed formula for allocation of the funding and contain the criteria for allocation to each state. The proposed regulations were developed to provide for the prompt allocation of funding as soon as funds become available.

30. The National Low Income Housing Coalition estimates that, utilizing the formula in the proposed regulations, for every \$1 billion invested into the Housing Trust Fund, the State of Florida would receive an additional \$50 million in subsidy directed significantly toward the development of housing affordable to extremely low income households.

31. Florida and New York both have historically utilized federal housing subsidy funds when they become available to promptly develop the housing required. Low Income Housing Tax Credits and similar subsidies are always oversubscribed. Moreover, south Florida, and Miami-Dade County have always received a significant proportion of federal funds distributed by the State of Florida and the Florida Housing Finance Corporation.

32. The subsidized housing infrastructure in Florida and New York is such that additional funding can be rapidly utilized and funding, such as the Housing Trust Fund, can be, and historically have been rapidly utilized to create new affordable housing.

33. The availability of the additional subsidy funds from the Housing Trust Fund would rapidly and significantly increase the number of units in Florida, south Florida and New York that are affordable to extremely low income households like Ms. Samuels, Ms. Torres, and Ms. Stelluto. Ms. Samuels, Ms. Torres, and Ms. Stelluto are all income eligible to apply for and rent that housing, and thus would have a significantly increased opportunity to obtain housing affordable to their income.

B. DEFENDANTS

34. Defendant Federal Housing Finance Agency (FHFA) is the federal agency, created by Congress on July 30, 2008, through the Housing and Economic Recovery Act of 2008, P.L. 110-289 (HERA). It is charged with oversight of the secondary mortgage market including Fannie Mae and Freddie Mac. Shortly after the passage of HERA, Fannie Mae and Freddie Mac were placed into conservatorship and FHFA was named as the conservator. Fannie Mae and Freddie Mac have continued in that conservatorship through the filing of this complaint.

35. Defendant Edward DeMarco is the Acting Director of FHFA and, as such, is charged with the administration and enforcement of all functions, powers and duties of FHFA. At all times relevant herein, he alone, as the Director, has had the statutory authority, pursuant to 12 U.S.C. §4567², to make the necessary findings to suspend the statutorily required payments from Fannie Mae and Freddie Mac to the Housing Trust Fund. Defendant DeMarco is sued herein in his official capacity.

IV. GENERAL ALLEGATIONS

A. The National Crisis in Affordable Housing for Extremely Low Income Households

36. Generally the U.S. Department of Housing and Urban Development defines affordable housing as housing in which a household need pay only 30% of their income in rent. While all housing markets are local, there is one fact that is true in every community in the country: No community has a sufficient supply of decent rental homes that are affordable to *extremely low income* families, defined as households having incomes at or below 30% of the area median.

²² The statute, 12 U.S.C. §4567, provides that only the Director may suspend payments. *See*, ¶150, *infra*.

37. In Miami-Dade County where Plaintiffs Angela Samuels and Rossana Torres reside, forty-two percent of the households are renters. The average rent for a modest two-bedroom rental home in Miami-Dade County is \$1,125, which would only be affordable to a family earning more than \$45,000. An extremely low income family of four in Miami-Dade County, FL has an annual income of approximately \$15,780 or less and can afford only \$395 a month in rent.

38. For the entire State of Florida the figures are essentially the same. The average rent for a modest two-bedroom rental home in Florida is \$965, which would be affordable to a family earning approximately \$38,000. An extremely low income family in the State of Florida has an annual income of approximately \$17,515 or less and should pay only \$438 in rent for affordable housing.

39. Similar problems exist across the United States. Due to the recent recession homeownership rates have decreased, forcing more homeowners into the rental market. By the fourth quarter of 2011, the homeownership rate dropped to 66%, the lowest rate since 1998. Over the past four years, renter household growth has consistently surpassed owner household growth.

40. It is estimated that the number of renter households rose by nearly 4 million between 2005 and 2010. Among these renter households, the number of extremely low income renters, those earning 30 percent or less of the Area Median Income (AMI), jumped by nearly 900,000 in the years between 2007 and 2010.

41. The latest American Housing Survey shows that there are 10 million extremely low income renter households in the United States and only 6.5 million homes renting at prices they can afford. These families, by definition, have few resources and the lack of affordable housing is the most frequently cited cause of homelessness.

42. The Secretary of Housing and Urban Development has defined households as experiencing worst-case housing needs if the household has an income at or below 50 percent of the area median income, receives no housing assistance, and has a severe rent burden (paying more than half of its income for rent) and/or lives in severely inadequate conditions (e.g., incomplete plumbing).

43. According to the Secretary, as of 2007, 47 percent of all extremely low income renters and 73 percent of extremely low income renters lacking housing assistance experienced worst-case housing needs. Thus extremely low income renters are particularly burdened with severe housing problems.

44. Moreover, the Secretary found that the shortage of low-cost rental units was the result of builders and housing providers being unable to construct, finance, and operate sufficient rental housing affordable to extremely low income households. As a result, the Secretary found that in 2007, for every 100 extremely low income renters nationwide, only 44 rental units were both affordable and available for rent or currently occupied by households in this income range. Finally, the Secretary noted that the Housing Trust Fund will provide funds to produce additional units affordable to extremely low income with the greatest need, thus increasing the supply and reducing the most critical component of the existing shortage. *Proposed Rules*, 75 Fed. Reg. 66978-01, 2010 WL 4255283.

45. However, no existing federal housing program other than the Housing Trust Fund is designed to create or preserve rental homes specifically targeted for extremely low income households, precisely the type of housing that is most needed. Even public housing, while a vital housing resource, is not limited to, or even targeted at, occupancy by extremely low income households. In addition, the existing federal programs, like public housing and Section 8

Housing Choice Vouchers, are grossly underfunded, forcing more and more lower income households to compete for the few available units.³

B. The Housing Trust Fund Legislation

46. The dramatic shortage of affordable housing for this most vulnerable segment of the population and the lack of federal funding to address it resulted in increased support and advocacy for the creation and funding of a national Housing Trust Fund which would provide a dedicated source of funding specifically targeted to creating and preserving housing affordable to extremely low income households.

47. Since 2000, NLIHC has led the National Housing Trust Fund campaign, a coalition of more than 6,000 national, state, and local organizations, located in every Congressional district, including the Right to the City Alliance, faith-based organizations, organizations that advocate for people with disabilities, organizations that work to end homelessness, and organizations that represent older Americans.

48. Finally, in 2008, Congress created the Housing Trust Fund, more commonly known as the National Housing Trust Fund, as part of the Housing and Economic Recovery Act of 2008 (HERA), P.L. 110-289 (July 30, 2008).

49. Congress intended the national Housing Trust Fund to be funded with a statutorily dedicated source of revenue, such that it would not be subject to the vicissitudes of the annual appropriations process and would not compete annually with existing HUD programs for funding. Thus Congress required that it be funded with a tiny percentage of the annual business of Fannie Mae and Freddie Mac. The Housing and Economic Recovery Act of 2008 funded the

³ The current HUD rental assistance programs, which tend to be targeted at low or very low income households, only serve 25 percent of eligible households.

Housing Trust Fund through contributions mandated by Section 1131(b) which amended Section 1337 of the Federal Housing Financial Safety and Soundness Act of 1992, 12 U.S.C. § 4567(a). It provided, in mandatory language, that:

Subject to subsection (b), in each fiscal year—

(1) the Federal Home Loan Mortgage Corporation *shall*--

(A) set aside an amount equal to 4.2 basis points for each dollar of the unpaid principal balance of its total new business purchases; and

(B) allocate or otherwise transfer--

(i) 65 percent of such amounts to the Secretary of Housing and Urban Development to fund the Housing Trust Fund established under section 4568 of this title; and

(ii) 35 percent of such amounts to fund the Capital Magnet Fund established pursuant to section 4569 of this title; and

(2) the Federal National Mortgage Association *shall*--

(A) set aside an amount equal to 4.2 basis points for each dollar of unpaid principal balance of its total new business purchases; and

(B) allocate or otherwise transfer--

(i) 65 percent of such amounts to the Secretary of Housing and Urban Development to fund the Housing Trust Fund established under section 4568 of this title; and

(ii) 35 percent of such amounts to fund the Capital Magnet Fund established pursuant to section 4569 of this title. [Emphasis added.]

50. The only exception to this mandatory contribution is provided in 12 U.S.C. § 4567(b)

which states:

(b) Suspension of contributions

The Director shall *temporarily* suspend allocations under subsection (a) by an enterprise upon a finding by the Director that such allocations--

(1) are contributing, or would contribute, to the financial instability of the enterprise;

(2) are causing, or would cause, the enterprise to be classified as undercapitalized; or

(3) are preventing, or would prevent, the enterprise from successfully completing a capital restoration plan under section 4622 of this title. [Emphasis added.]

51. A primary statutory purpose of the national Housing Trust Fund is “to increase and preserve the supply of rental housing for extremely low- and very low-income families,

including homeless families.” 12 U.S.C. §4568(a)(1)(A). No more than 10 percent can be used for homeownership activities. It is a block grant program that is housed at U.S. Department of Housing and Urban Development. Funds are to be distributed to the states and territories by a formula that is based on need, primarily need for rental homes affordable for extremely low income families. 12 U.S.C. §4568(c).

52. On October 29, 2010 U.S. HUD issued proposed regulations for the administration of the Housing Trust Fund and the distribution of its funding. 75 Fed. Reg. 66978-01, 2010 WL 4255283. The estimate for the amounts to be distributed to Florida, contained in Paragraph 30 above, was calculated based on these proposed regulations.

C. The Conservatorship of Freddie Mac and Fannie Mae (“the Enterprises”) and the Suspension of Housing Trust Fund Payments.

53. In the fall of 2008, Fannie Mae and Freddie Mac were placed in conservatorship and the Defendant FHFA was named as the conservator. When Fannie Mae and Freddie Mac were first placed in conservatorship they received a substantial infusion of capital from the U.S. Treasury in the form of the purchase of preferred stock by the Treasury for which the Treasury received a yearly dividend of 10 percent. Overall, the U.S. Treasury has invested approximately \$116 billion in Fannie Mae and \$72 billion in Freddie Mac. Fannie Mae and Freddie Mac have made all yearly dividend payments and have not accessed any additional capital infusions since the second quarter of 2012.

54. In the fall of 2008, the Federal Defendants instructed Fannie Mae and Freddie Mac to suspend all payments to the Housing Trust Fund pursuant to 12 U.S.C. § 4567(b). Since that time, despite repeated requests, the Federal Defendants have failed and refused to revisit or review their suspension of payments.

55. In 2012, both Enterprises were extremely profitable. Fannie Mae reported profits of more than \$17 billion, the largest profit in company history. Freddie Mac reported profits of over \$11 billion. In May 2013, Fannie Mae announced a 2013 first quarter pre-tax income of \$8.1 billion, the largest quarterly income in the company's history. The statutorily required amount that was required to be paid into the Housing Trust Fund based upon the statutorily required percentages of the Enterprises' business in 2012 would have been less than \$500 million dollars.

56. In December 2012, after the Enterprises reported significant, if not record, profits, the Treasury and the Federal Housing Finance Agency renegotiated the dividend payments on the Treasury's preferred stock so that substantially all of the profits of Fannie Mae and Freddie Mac would be paid to the U.S. Treasury as a dividend. This modification had no impact on the amounts due to the Housing Trust Fund since the mandatory payments to the Housing Trust Fund would be made prior to the calculation of the dividend paid to the U.S. Treasury.

57. On or about April 15, 2013 Plaintiffs National Low Income Housing Coalition and Right to the City Alliance wrote to the Federal Defendants and demanded that the Federal Defendants review their initial determination to suspend the statutorily required payments to the Housing Trust Fund. Federal Defendants failed and refused to acknowledge or respond to that request.

58. On or about March 25, 2013, undersigned counsel made a written request to the Federal Defendants pursuant to the Freedom of Information Act, 5 U.S.C. §552, for documents containing or reflecting the determination to suspend the statutorily required payments to the Housing Trust Fund and/or the supporting findings. On May 10, 2013 the Federal Defendants responded, again refusing to provide any of the documents.

59. Undersigned appealed the Federal Defendants' refusal to respond and on July 8, 2013 Federal Defendants provided two letters (one page each) dated November 13, 2008 instructing Fannie Mae and Freddie Mac to suspend allocations pursuant to Section 1337 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended. (A copy of these letters are attached hereto as Exhibits A and B.) The letters state that the suspension was based on findings (a) that the amount of the contribution would further contribute to the financial instability of the Enterprises; and (b) that, while FHFA has suspended capital classifications, it was anticipated that the Enterprises would be required to draw funds from the U.S. Treasury to maintain a positive net worth.

60. Despite the record profits of the Enterprises and despite the statutory requirement that any suspension of payments be temporary, the Federal Defendants have failed and refused to review these findings and/or discontinue their suspension of the statutorily required payments by Fannie Mae and Freddie Mac into the Housing Trust Fund.

V. IRREPARABLE INJURY

61. As a result of the illegal actions of Defendants, Plaintiffs are being irreparably harmed in that funds which have been statutorily mandated to be utilized for the development and preservation of extremely low income housing are being paid to the U.S. Treasury by the Federal Defendants. As a result individual Plaintiffs, and extremely low income members of the nonprofit Plaintiffs, will be deprived of opportunities to obtain decent affordable housing for the foreseeable future. Moreover, nonprofit Plaintiffs will be forced to expend monies and staff time searching for alternative sources of funding extremely low income housing instead of developing programs to actually implement the funding that should already be available.

VI. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
(By All Plaintiffs Against Federal Defendants)
For Violation of the Administrative Procedures Act, 5 U.S.C. § 702, et seq.

62. Plaintiffs incorporate by reference herein each and every allegation of paragraphs 1 through 61 as though fully set forth herein.

63. The action of Federal Defendants in ordering Fannie Mae to suspend the statutorily required payments to the Housing Trust Fund is a final agency action subject to judicial review pursuant to 5 U.S.C. §704.

64. The action of Federal Defendants in ordering Fannie Mae to suspend the statutorily required payments to the Housing Trust Fund is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law in that:

a. Despite the fact that 12 U.S.C. § 4567(b) requires that the suspension be temporary or time limited, Plaintiffs are informed and believe that the 2008 suspension was never temporary or time limited as is required by the statute;

b. Despite the fact that 12 U.S.C. § 4567(b) requires that the suspension be temporary or time limited, Plaintiffs are informed and believe that the 2008 suspension has never been reviewed by Federal Defendants despite the dramatic change in financial condition as is evidenced by the Enterprises reporting almost one and a half years of record profits;

c. To the extent that the Federal Defendants' suspension determination is supported by findings, Plaintiffs are informed and believe that those findings are arbitrary and capricious in light of the changed and current financial condition of the Enterprise. The required statutory contribution is a small percentage of the Enterprise's profits and thus would not contribute to the financial instability of the Enterprise. 12 U.S.C. §4567(b)(1). Nor would the payment cause the

Enterprise to be classified as undercapitalized (12 U.S.C. § 4567(b)(2)) or prevent it from completing a "capital restoration plan under section 4622." (12 U.S.C. § 4567(b)(3)). Fannie Mae is not under a "capital restoration plan under section 4622" and the conservator, independent of the amount of profits, has made a policy decision not to recapitalize Fannie Mae. Thus, the level of capitalization is solely a function of the policy decisions of the conservator not the cost of contributions to the Housing Trust Fund.

SECOND CLAIM FOR RELIEF
(By All Plaintiffs Against Federal Defendants)
For Violation of the Administrative Procedures Act, 5 U.S.C. § 702, *et seq.*

65. Plaintiffs incorporate by reference herein each and every allegation of paragraphs 1 through 61 as though fully set forth herein.

66. The action of Federal Defendants in ordering Freddie Mac to suspend the statutorily required payments to the Housing Trust Fund is a final agency action subject to judicial review pursuant to 5 U.S.C. § 704.

67. The action of Federal Defendants in ordering Freddie Mac to suspend the statutorily required payments to the Housing Trust Fund is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law in that:

a. Despite the fact that 12 U.S.C. § 4567(b) requires that the suspension be temporary or time limited, Plaintiffs are informed and believe that the 2008 suspension was never temporary or time limited as is required by the statute;

b. Despite the fact that 12 U.S.C. § 4567(b) requires that the suspension be temporary or time limited, Plaintiffs are informed and believe that the 2008 suspension has never been

reviewed by Federal Defendants despite the dramatic change in financial condition as is evidenced by the Enterprise reporting almost one and a half years of significant profits;

c. To the extent that the Federal Defendants' suspension determination is supported by findings, Plaintiffs are informed and believe that those findings are arbitrary and capricious in light of the changed and current financial condition of the Enterprise. The required statutory contribution is a small percentage of the Enterprise's profits and thus would not contribute to the financial instability of the Enterprise. 12 U.S.C. §4567(b)(1). Nor would the payment cause the Enterprise to be classified as undercapitalized (12 U.S.C. §4567(b)(2)) or prevent it from completing a "capital restoration plan under section 4622." (12 U.S.C. §4567(b)(3)). Freddie Mac is not under a "capital restoration plan under section 4622" and the conservator, independent of the amount of profits, has made a policy decision not to recapitalize Freddie Mac. Thus, the level of capitalization is solely a function of the policy decisions of the conservator not the cost of contributions to the Housing Trust Fund.

THIRD CLAIM FOR RELIEF

(By All Plaintiffs Against Federal Defendants)

For Violation of the Administrative Procedures Act, 5 U.S.C. § 702, et seq.

68. Plaintiffs incorporate by reference herein each and every allegation of paragraphs 1 through 61 as though fully set forth herein.

69. The action of Federal Defendants in ordering Fannie Mae to suspend the statutorily required payments to the Housing Trust Fund is a final agency action subject to judicial review pursuant to 5 U.S.C. §704.

70. Despite the dramatically changed financial circumstances (including record profits) by Fannie Mae, and the statutory mandate that any suspension be temporary, the Federal Defendants

have never reviewed their decision to suspend payments or imposed any temporal limitations requiring such a review.

71. The failure of the Federal Defendants to timely review their decision to suspend payments constitutes an unlawful withholding or unreasonable delay in required agency action.

72. Had the Federal Defendants timely reviewed their findings they could no longer factually support the findings required under 12 U.S.C. §4567(b). The required statutory contribution is a small proportion of the Enterprise's profits and thus would not contribute to the financial instability of the Enterprise. 12 U.S.C. §4567(b)(1). Nor would the payment cause the Enterprise to be classified as undercapitalized (12 U.S.C. §4567(b)(2)) or prevent it from completing a "capital restoration plan under section 4622." (12 U.S.C. §4567(b)(3)). Fannie Mae is not under a "capital restoration plan under section 4622" and the conservator, independent of the amount of profits, has made a policy decision not to recapitalize Fannie Mae. Thus, the level of capitalization is solely a function of the policy decisions of the conservator not the cost of contributions to the Housing Trust Fund.

FOURTH CLAIM FOR RELIEF

(By All Plaintiffs Against Federal Defendants)

For Violation of the Administrative Procedures Act, 5 U.S.C. § 702, et seq.

73. Plaintiffs incorporate by reference herein each and every allegation of paragraphs 1 through 61 as though fully set forth herein.

74. The action of Federal Defendants in ordering Freddie Mac to suspend the statutorily required payments to the Housing Trust Fund is a final agency action subject to judicial review pursuant to 5 U.S.C. §704.

75. Despite the dramatically changed financial circumstances (including significant profits) by Freddie Mac, and the statutory mandate that any suspension be temporary, the Federal

Defendants have never reviewed their decision to suspend payments or imposed any temporal limitations requiring such a review.

76. The failure of the Federal Defendants to timely review their decision to suspend payments constitutes an unlawful withholding or unreasonable delay in required agency action.

77. Had the Federal Defendants timely reviewed their findings they could no longer factually support the findings required under 12 U.S.C. §4567(b). The required statutory contribution is a small proportion of the Enterprise's profits and thus would not contribute to the financial instability of the Enterprise. 12 U.S.C. §4567(b)(1). Nor would the payment cause the Enterprise to be classified as undercapitalized (12 U.S.C. §4567(b)(2)) or prevent it from completing a "capital restoration plan under section 4622." (12 U.S.C. §4567(b)(3)). Freddie Mac is not under a "capital restoration plan under section 4622" and the conservator, independent of the amount of profits, has made a policy decision not to recapitalize Freddie Mac. Thus, the level of capitalization is solely a function of the policy decisions of the conservator not the cost of contributions to the Housing Trust Fund.

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Vacate and set aside as null and void FHFA's decision to indefinitely suspend payments by Fannie Mae and Freddie Mac to the Housing Trust Fund;
2. Declare that Federal Defendants have violated the Administrative Procedure Act by acting in an arbitrary and capricious manner regarding their decision to indefinitely suspend payments to the Housing Trust Fund by Fannie Mae and Freddie Mac and by unlawful withholding or unreasonable delaying any review of their agency action;

3. Order the FHFA to instruct Fannie Mae and Freddie Mac that Federal Defendants' challenged decisions to withhold payments from the Housing Trust Fund were null and void and that Fannie Mae and Freddie Mac must proceed as if those decisions had never taken place;
4. Award Plaintiffs their reasonable attorney's fees and costs pursuant to 28 U.S.C. § 2412(d)(1)(A); and\
5. Grant such other relief as the Court may deem just and proper.

Respectfully submitted,

Attorneys for Plaintiffs

Dated: July 8, 2013

/s/ Charles Elsesser Jr.

Charles Elsesser, Jr.

Fla. Bar No.971162

Meena Jagannath

Fla. Bar No. 102684

Betsy Havens

Fla. Bar No. 92438

Community Justice Project

Florida Legal Services, Inc.

3000 Biscayne Blvd. Suite 102

Miami, Florida 33137

Phone: (305) 573-0092 ext. 208

Facsimile: (305) 576-9664

charles@floridalegal.org

cjpservice@floridalegal.org